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BAR BULLETIN

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"LAWYERS, LOOK OUT!"

The article under the above caption appeared in the February Bulletin. It attracted wide attention among Los Angeles County lawyers, and drew some very interesting comment. Among those who wrote either to the author, Mr. Whitney Harris, or to The Bulletin, is Hon. Louis W. Myers, former Chief Justice of the Supreme Court of California. Judge Myers' analysis of the situation, printed below, will be of great interest to the readers of The Bulletin.

Los Angeles, Feb. 29, 1940.

Editors of The Bar Bulletin:

I have read with interest the article in the February BAR BULLETIN, entitled "Lawyers, Look Out!", and feel impelled to accept your invitation to "send in your comment." The article is timely, is foundationed on facts carefully assembled, is logically presented, and provides food for thought. It is possible, however, that the situation is not quite so black as it is painted, and I would like to try to strike a somewhat more optimistic note, before we all decide to send in our resignations to the State Bar.

The author's premise that

> ". . . in substantial litigation lies the principal justification for our professional talents and the principal source of our professional emoluments."

is perhaps open to question. It always has seemed to me that the constructive work which a lawyer does in his office and in his library is his principal justification for being; that a lawyer's most worthwhile service is rendered by counselling, advising and guiding his clients so that they may accomplish their legitimate and proper aims and purposes free from substantial hazard of expensive litigation; in short, that the lawyer best serves his clients who succeeds best in keeping them out of court, without substantial sacrifice of their rights or legitimate interests.

The question of "emoluments" is not so clear. It must be conceded (regretfully) that it sometimes happens that the lawyer who saves his client from long, bothersome, hazardous and expensive litigation, by effectuating a reason-

able compromise, receives but little compensation and less appreciation for so doing. I still stick to the belief, however, that the lawyer who adheres to the policy of doing what is best for the client, regardless of what seems best for the lawyer, will profit thereby, in the long run, in emoluments as well as in satisfaction.

Apart from the question of avoiding litigation by compromise, I have the impression that the lawyer who by hard and intelligent work in his office and library so guides the industrial, commercial or financial operations of his client that there shall be slight occasion for either litigation or compromise, usually gets well paid therefor,—better, perhaps, than the one who specializes in litigation.

The tabulation of civil filings in this county for the years 1930 to 1939 is not conclusive. It shows that the number was very large for the years 1930, '31 and '32; that it then declined sharply to a low point in 1935, since when there has been a small but substantial and fairly steady increase. May it not be that the volume of filings in those first three years was abnormally large, as a result of the financial crash and destruction of values which occurred in the fall of 1929? In those years, creditors were cracking down on debtors unable to pay; losers were industriously endeavoring to shift the burden of their losses to other shoulders, by means of litigation based upon claims of fraud, breach of contract, breach of trust, violation of the Corporate Securities Act, etc. This flood of "depression litigation" had subsided by 1935, and the number of filings for that year was perhaps more nearly normal. If these surmises should happen to be correct, the picture painted by the figures would not appear nearly so black.

It may be also that there are some offsetting figures which could be placed on the other side of the ledger. For instance, it seems likely that there has been a large increase, in the past ten years, in the volume of litigation conducted by Los Angeles County lawyers in the federal courts. This would naturally result from the enormous expansion of the field of federal regulation and federal jurisdiction which has progressed during the past seven years, to the point where it impinges upon our most intimately local transactions.

Then there is the huge field of tax law, state and federal, which in the past ten years has grown to such an extent that it is of very great importance to everyone who has anything to tax. (And they are the only people who can pay lawyers' fees, though they are not the only ones who can vote.) This great field of tax law should be cultivated by the lawyers,—not to the exclusion of the accountants, but in cooperation with them. Certainly, not by the accountants to the exclusion of the lawyers.

Consider also the quasi judicial functioning of administrative boards and commissions, which during the past ten years has invaded the former province of the courts by leaps and bounds; NLRB, SEC, FTC, FCC, etc. Sooner or later (let us hope sooner), the decisions of those boards will all be subjected to review by the courts. This is lawyers' work; work for real lawyers. If we are not doing it, we ought to be.

We are living in a rapidly changing world. *Otros tiempos, otros modos.* Perhaps it behooves us lawyers to wake up and adjust ourselves to the changes which are taking place all around us. Fields of service formerly allotted to lawyers have been and are being fenced off from us. But other fields have been and are being opened up, fields of service which lawyers should be best qualified to render.

In short, I think that it is still possible for a Los Angeles County lawyer to earn a living without committing burglary or robbing a bank. It doesn't seem, however, that sitting on the side of the hill and watching the rest of the world go by, is the best way to accomplish this. Therefore, while I am not so pessimistic in regard to our future as Mr. Harris appears to be, I feel that we are indebted to him for calling our attention to the importance of "doing something about it." He brings again to the fore another fact which we can't afford to ignore, however unpleasant it may be to contemplate, namely, that there are one-third more lawyers here now than there were ten years ago, when, as we all know, there were many too many then. This, I think, is the most serious factor in our situation. What to do about it, I don't know, but it fully justifies the warning, "Lawyers, Look Out!"

Yours truly,

LOUIS W. MYERS.

"WHAT PRICE BAR ASSOCIATION"

UNDER the above caption the *Chicago Bar Record* prints an article by Mr. Donald A. Winder, in which he shows that, of the 11,650 lawyers listed in the Legal Directory of that city, 5,236 are not members of any bar association, and asks the question: "Why do eleven thousand lawyers of Chicago support seven separate bar associations in this city when no bar association is truly representative of the lawyers of Chicago?"

The writer takes as a premise: an effective, efficient, organized bar would be of great benefit to the individual lawyers, but to be effective an organized bar must consist of most of the lawyers, and to be efficient, such an organization must first discover why the lawyers do not affiliate into one strong body and then put into execution a plan designed to render genuine service to the lawyers at a price they will be willing to pay for such service.

It then shows the number who are members of one or more associations, as follows:

Total of lawyers belonging to one or more bar associations	6,424
Total number belonging to one association only	3,212
Total number belonging to two associations only	1,650
Total number belonging to three associations only	1,452
Total number belonging to four associations only	110
Total number belonging to a bar association, but not a member of the Chicago Bar Association	2,486
Total number of lawyers in Chicago who are not members of the Chicago Bar Association	7,712

The opinion is expressed that, "the condition is more likely due to organization lethargy rather than any innate resistance of the individual lawyer to associate." It is suggested by the writer that "in order to find what is wrong," a committee be authorized to study the problem and report on, among other things, the following: (a) Plan of coordination with all other bar associations and groups, with the object of providing for automatic membership in state and national associations for each lawyer affiliating with the Chicago Bar Association; (b) providing for a cooperative plan of printing; (c) the desirability of establishing sections to provide a forum for every lawyer interested in a particular subject or branch of the law; (d) the planning for a dignified public educational campaign, and (e) ways and means to reduce the dues.

ACTIVITIES OF THE JUNIOR BARRISTERS

By Hudson B. Cox, of the Los Angeles Bar

(NOTE: This is the first of what we hope will become a regular feature in each months' issue of The Bulletin. Its purpose will be to apprise the younger members of the Bar, and those of the older ones who may be interested, of the activities of the Junior Barrister's Organization each month and to act as a convenient calendar of meetings and social events scheduled for the following month. In order that this feature page may answer its purpose and operate successfully in the months to come, chairmen of all Junior Barrister Committees are earnestly requested to communicate all newsworthy items respecting the activities of their respective committees to Hudson B. Cox, at 1020 Edison Building, MUtual 7205.)

THE month of March may properly be termed the organizational month of the Junior Barristers. Harold Schweitzer, who was voted into office as the Chairman of the organization at a meeting on January 25, 1940, succeeding W. Thomas Davis, last year's Chairman, has had what will possibly be his busiest weeks in office organizing his various committees, of which there are seventeen, and getting them started upon the road to a successful and worthwhile year. Questionnaires were sent out to each member of the Junior Barristers and those who elicited sufficient interest to respond were given a place upon one or more of the various committees, corresponding as nearly as was possible to the type of activity for which they claimed a preference.

On March 1 the new Executive Council, the governing body of the Junior Organization and composed in large part of the chairmen of the various committees, held its first meeting in the Los Angeles Stock Exchange Club. Harold Schweitzer explained to his council the reason for and the nature of the work expected from each of the seventeen committees which range in nature from such serious and eminently worthwhile committees as that on Legal Aid and the Employment and Placement Bureau to the lighter but no less vital Spring Frolic Committee.

THE BAR BULLETIN Committee met at lunch on March 8 with the similar committee of the Senior Bar under Ewell D. Moore, the veteran editor of THE BULLETIN and for many years its guiding light. Mr. Moore discussed various of the problems confronting THE BULLETIN Committee and the manner in which the Junior Committee could best assist in the editing and publication of THE BULLETIN.

The Public Information Committee headed by Francis McEntee and composed of both a Speakers' Committee charged with supplying speakers for high schools, clubs and other organizations, and a radio committee which conducts a regular weekly program over Station KFAC, got off to a flying start with two short organizational meetings on March 8 and March 12 and a large open meeting on March 14 in the Library of the City Attorney's office. At this latter meeting, attended not only by the Committee but by all young attorneys interested in speaking either in public or over the air, a definite and progressive program was mapped out to foster a better understanding and relationship between the lay public and the profession through the medium of instructive addresses and interesting broadcasts of a semi-legal nature.

The Social Events and Calendar Committee under the chairmanship of Bill Lane met on March 7. It was proposed by the Committee that a regular monthly series of evening "smokers" be inaugurated for the Junior Barristers to fill a long-felt want of an opportunity on the part of the younger lawyers to get together at regular intervals in informal gatherings.

On March 11 the Law Lecture Committee under the guidance of Whitney Harris met for lunch at the Rosslyn Hotel. This committee having charge of

planning for the resumption of the highly interesting and instructive talks, which were given for some time at monthly breakfast meetings of the Junior Barristers, took under consideration the advisability of combining these projected addresses by leading members of the Bench and Bar with the proposed monthly "smokers," with the view that before the inevitable poker and bridge games a portion of the evening might be devoted to an open forum discussion conducted by a qualified guest speaker. The matter will be considered and voted upon at the next meeting of the Executive Council.

Various other of the committees have either had no occasion for a formal meeting as yet or have their first meeting planned for a date in the near future. Two of the most active committees, Lewis Sterry's Legal Aid Committee and Stanley Jewel's section of the Placement Bureau (for the Solicitation of Employment Opportunities in Banks, Insurance, Title and Escrow Companies) met late in February, the Placement Bureau section entertaining at a lunch given for the trust officers and personnel managers of six Los Angeles banks and two of the Title companies.

So far as scheduled activities of the Junior Barristers for the coming month are concerned no definite dates are as yet available but we anticipate that this deficiency will be remedied before the next issue of THE BULLETIN as the programs of the respective committees take shape. Suffice it to say that no member need be in ignorance of the various coming events as they are planned for we are assured that through the courtesy and cooperation of the *Los Angeles Daily Journal* and the *Los Angeles News* ample and adequate advance publicity will appear in their pages.

Opportunities

ONCE in awhile a Junior Barrister is heard to say that he has had no opportunity to participate in the works or policies of the Junior Barristers. This year, as in the past, the chairman sent a questionnaire to each Junior Barrister and asked him to state his preference in committee work and to express his criticisms or suggestions relative to the activities of the Junior Barristers. Each man who replied was given a place on one or more committees. Only one-fourth of those who received the questionnaire replied. If you were given no part in the activities, it is simply because you did not express a desire to take part; it is not too late to do so. If you are interested in taking part in the 1940 program of the Junior Barristers, your Chairman, Harold W. Schweitzer, asks that you write or confer with him immediately.

Many suggestions were made to your Chairman in replies to the questionnaire. A standing committee has been appointed to analyze these suggestions and any others that may be made from time to time during the year. If you have any ideas or criticisms relative to Junior Barristers' activities, please communicate them to your Chairman, and rest assured that they will be given due consideration.

HAROLD W. SCHWEITZER.

EDUCATION AND PUBLIC INFORMATION

THE work of the Association's Committee on Education and Public Information, of which Harry J. McClean is the General Chairman, was divided into four sections during the past year, namely: 1, Law Lectures; 2, Luncheon Meetings; 3, Speaker's Bureau, and 4, Law Library Lectures. In his report to the Board Mr. McClean says:

Section 1 has been in immediate charge of David Tannenbaum, vice-chairman.

Section 2 has been under the immediate direction of C. E. McDowell, whose report is hereto attached.

Section 3 has been handled by the general chairman.

Upon request the Association has furnished speakers for fourteen occasions. The following members of the Association have filled engagements at the request of the general chairman:

David Tannenbaum, Frank Belcher, Edward C. Purpus, Byron C. Hanna, Lawrence L. Otis, Julius V. Patrosso, J. Harold Decker and Florence M. Bischoff. The general chairman has filled six speaking engagements.

Section 4 has been inactive to date because such lectures are only given when requested by the Central Public Library.

The general chairman has also had theoretical supervision of the radio work of the Junior Barristers. Several conferences have been held with the past president of the Junior Barristers and with various members of the board of trustees, particularly Judge Isaac Pacht, concerning the radio work of the Junior Barristers. The general chairman has exercised no actual supervision over this radio work of the Junior Barristers. The detail of checking radio script has been handled by the Junior committee, with occasional assistance from different members of the Board. The lack of any substantial criticism of the radio programs shows the care of the committee in its radio work. It is the opinion of the general chairman that the radio work of the Junior Barristers serves a useful purpose in providing means by which junior members of the Bar may properly express themselves on professional subjects and that the work should be largely delegated to an appropriate Junior committee, with some member of the Board specially appointed for conference and supervision when needed.

The committee in charge of the semi-monthly luncheons of the Los Angeles Bar Association consisted of the following members:

C. E. McDowell, chairman; George B. Gose, secretary; Frederick E. Hines, Clyde C. Triplett, H. E. Breitenbach, Thomas S. Dabagh, Maurice Norcop, William Howard Nicholas and Paul W. Jones.

Semi-monthly luncheon meetings were held at the Hotel Rosslyn. Various members of the Bar spoke at these meetings, as follows:

1. Kurtz Kaufman; subject, Supplemental Proceedings.
2. J. Wesley Cupp; subject, Injunctions and Proceedings in Connection With Labor Relations.
3. E. S. Williams; subject, American Bar Association's Administrative Law Bill Providing for Settling of Disputes With the United States.
4. James A. McLaughlin; subject, Spendthrift Trusts.
5. Frederick E. Hines; subject, Tax Aspects of Property Settlement Agreements.

6. William B. Stern, head cataloguer of the Los Angeles County Law Library; subject, Problems of the European Bar.
7. Benjamin Harrison, United States District Attorney; subject, The United States Attorney's Office From the Inside.
8. Robert W. Kinney, State Senator; subject, Important General Laws Enacted at Recent Session of Legislature.
9. B. Rey Schauer, Judge of the Superior Court; subject, Recent Amendments to the Civil Code.
10. Arthur L. Syvertson; subject, Significant Changes in the Code of Civil Procedure.
11. Elliott Craig, Judge of the Superior Court; subject, Amendments to the Probate Code.
12. Clyde C. Triplett; subject, Double Taxation on Estates in Light of Recent Decisions.
13. Garfield R. Jones, Supervising Conciliation Commissioner; subject, Introduction to Practice Under Section 75 of the Bankruptcy Act.
14. John R. Moore, State Inheritance Tax Appraiser; subject, Inheritance Tax Procedure.
15. Mortimer A. Kline; subject, Sub-surface Trespassing.
16. Earl E. Moss; subject, Summary Jurisdiction of Bankruptcy Courts.

NEW LECTURE COURSE

To the Members of the Bar in Los Angeles County:

The Los Angeles Bar Association announces a new series of lectures on legal topics as follows:

Re-examination of Procedural Law, by Professor Stanley Howell, March 14, March 21, April 4, April 18, May 2 and May 16.

Anti-Trust Law, by David L. Podell, Esq., March 28, April 11, April 25 and May 9.

Labor Law, by Professor Shelden D. Elliott, May 23 and June 6.

The lectures will be held from 7:30 to 9:30 in the evening on the dates specified. The place of meeting will be the Assembly Hall, Edison Building, corner of Fifth and Grand Avenue, Los Angeles.

A registration fee will be charged as follows:

For Re-examination of Procedural Law, $7.50 to members of the Los Angeles Bar Association and $10 to non-members.

For Anti-Trust Law and Labor Law, $7.50 to members of the Los Angeles Bar Association and $10 to non-members.

Registration entitles the registrant to admission to the respective series of lectures and to receive a syllabus covering the subject.

Professor Stanley Howell and Professor Sheldon D. Elliott need no introduction to the local Bar. Professor Howell is professor of Procedural Law at the University of Southern California. Professor Elliott is well and favorably known to the members of the Bar not only for his professorial work at the University of Southern California but for his previous lecture work in behalf of the post-admission educational program of the Los Angeles Bar Association. Mr. Podell is nationally known for his work in anti-trust litigation, both as counsel for the government and in private representation. While his work is largely in New York and Washington, we are fortunate to be able to avail ourselves of his services while sojourning temporarily in Southern California.

It is necessary that you have an admission card in order to attend classes, and upon receipt of your registration and payment of the required fee your admission card will be forwarded. Members of the Bar will be privileged to attend either Professor Howell's course or the series of lectures given by Mr. Podell and Professor Elliott, or registration may be made for both courses. Because of the limited capacity of the Assembly Hall, registrations will be closed as soon as the capacity is reached.

Yours very truly,

HARRY J. MCCLEAN, *General Chairman,*
Committee on Education and Public Information
DAVID TANNENBAUM, *Vice-Chairman*
in charge of Law Lectures
GEORGE E. FARRAND
JOSEPH MUSGROVE
RALPH LINDSTROM
HON. LESTER W. ROTH
KRYNE VAN DEN AKKER
STEVENS FARGO

HOMESTEAD PROTECTION

By Stephen J. Loughlin, of the Los Angeles Bar

CONFUCIUS say—"Chinese Gentleman's Home is Chinese Palace."

I have no information as to whether Confucius was actually the author of the above remark or not, but it is my idea of what the distinguished and, at present, very popular philosopher would have said if he were speaking on the subject.

It has been the custom of practically every country under the sun to encompass a man's home with protection against invasion from every source almost since the dark ages, and it is the love of human beings for their homes which has been the moving force in the enlistment of volunteers in all the great armies of the world which have been mobilized to defend their respective countries, knowing that an invasion of their country would necessarily result in the loss of their homes.

California has given its citizens who own their homes protection from civil invasion of those homes in what is known as the right to file a declaration of homestead and, once a good declaration of homestead is filed, the property covered by it is immune from execution or forced sale in satisfaction of certain debts, and is also a restriction upon the power of either spouse acting alone to convey, encumber or destroy the homestead, thus giving protection against invasion by others and also against their own folly.

A declaration of homestead, however, is not always what it seems from the record, for it may be held to be invalid if the parties were not actually residing on the premises when it was selected as a homestead, if the property selected is not a *bona fide* home or if the parties had selected a homestead previously and the same has not been abandoned.

If a man and wife select as a homestead the property used by them as their actual residence and not as a camouflage at the time of the selection, and there are no other impediments, then such property remains the homestead of the parties until it is abandoned, either by an actual abandonment executed by both parties and acknowledged by them and recorded, or by a grant deed executed by both parties and acknowledged by them and recorded. The fact that subsequent to the selection of the property as a homestead the parties move from the same and establish residence elsewhere does not in any way affect the validity or protection given by the homestead.

A good homestead not only protects the property while the parties are living, but is protection after one of the spouses dies: the property selected is not subject to administration, but passes directly to the surviving spouse and cannot be made subject to the payment of the debts of the deceased spouse.

There are times, however, when the filing of a declaration of homestead will not accomplish the result desired by the party selecting the same, but only serves to complicate the title to the property and the same may be tied up indefinitely. Title companies have been criticized from time to time for refusing to insure title to real property subject to what appears to be a good homestead where there are judgments against the parties, but the reason for this situation is that while the homestead appears sufficient on its face, it nevertheless might be attacked on the grounds that the parties to the declaration might not have been residing on the property at the time of selecting the same as a homestead or they may have at some prior time selected a homestead which has not been legally abandoned or the property selected might be held not to be the proper subject of a homestead.

In view of the many complications that might arise, a party deeming it necessary to select a homestead should have legal advice before doing so.

"WHAT DOES THE BAR ASSOCIATION DO?"

By Ewell D. Moore, of the Los Angeles Bar

TOO many lawyers, who do not interest themselves in *any* Bar organization work, ask the question quoted in the above caption. At least half of those holding a license to practice, and residing in Los Angeles County, do not belong to any of the several organized Bar groups. Why this should be so is difficult to understand by those who are trying to render an important public service as well and to improve conditions for *all* members of the Bar. A year ago THE BULLETIN printed a list of some of its regular activities. Perhaps it is not too soon to repeat the list.

The situation, though it may appear disheartening, is not without signs of improvement. The one cheering development in recent years is the interest shown by the younger members of the Bar. They have displayed increasing understanding of the Bar's problems during the past year. More of the young men and women are joining Bar Associations as soon as they are admitted to practice and seeking membership on committees that carry on the many activities of every well-organized Bar group. In this they are foresighted. They get experience from contacts and fit themselves to take over the burdens of the older members.

As to our own Los Angeles Bar Association, with approximately 2000 members at this time, it seems proper to quote briefly from a statement of the recent president of the Association, Mr. Allen W. Ashburn. He said:

"The purposes of the Association have to do primarily with the effective operation of the courts, the elimination of unnecessary delays, and the improvement in the quality of judgment and justice that is meted out. Ours, a voluntary organization, is in no sense a commercial guild organized or conducted for personal gain. While we are interested in the welfare, material and otherwise, of every member of our profession, particularly the younger practitioners, we believe that enlightened self-interest demands a broader policy than mere seeking after the lawyer's own financial betterment. Our Association is definitely committed to a program of public service."

Whenever a member of the Association solicits a fellow lawyer for his application for membership, it would be well to enumerate these activities carried on by the Association for the benefit of the public and the bar:

1. Conducts bi-weekly luncheon meetings, at which well-qualified speakers discuss subjects of practical value to every lawyer in his practice.
2. Radio broadcast on Saturday evening of each week, from Station KFAC at 6:45 P. M., designed to inform the public on topics of interest and benefit to laymen.
3. Publishes the BAR BULLETIN monthly for members, which usually contains at least one technical article by a specialist, on new laws or decisions, of wide interest to active lawyers; besides, it keeps members informed of the activities of Associations in other States with respect to many problems affecting the practice of law.
4. Maintains an Experienced Lawyers' Service at the Association office, where members may file a statement of the particular branches of the law in which they specialize, and to whom inquiries may be referred.
5. Conducts post-admission lecture courses for lawyers, consisting of two branches, (a) a special course for the older practitioners, and (b) a general course for the younger bar members. These lectures have proved popular and of much benefit to those attending.

6. Maintains a Committee on Arbitration, to adjust controversies between attorneys and clients regarding fees and other matters.
7. Assists members who have ethical problems, with carefully-considered opinions by the Ethics Committee.
8. Sponsors lecture courses by members at the Public Library auditorium, on subjects of interest to the general public.
9. Gives aid and assistance to the legal clinic, financial and otherwise.
10. The Junior Barristers Committee, consisting of about 400 young lawyers, renders invaluable services to the membership through its extensive activities in public and professional matters.
11. Likewise, the Women's Junior Committee renders similar service to the membership generally, and particularly to women lawyers.
12. Takes an important part in State Bar work, particularly in considering and sponsoring matters for actions at the State Bar annual conventions.
13. Sponsors a legislative program for the improvement of the administration of justice at each session of the Legislature, in cooperation with the State Bar.
14. Conducts a plebiscite of the lawyers of the entire county on all candidates for the Superior and Municipal Courts, and advises the public of the result thereof.
15. Gives monthly golf tournament for members, under arrangements by the Golf Committee.
16. Holds monthly dinner meetings of members, at which are presented discussions by prominent speakers on subjects instructive to lawyers.
17. The Board of Trustees meets weekly to consider administrative matters of the Association as well as a variety of problems affecting the welfare of the Bar.
18. Conducts, through the Junior Barristers, a placement bureau for young lawyers, and assists them in their efforts to establish themselves.

DIGEST OF RECENT DECISIONS

By Sidney H. Wall, of the Los Angeles Bar

BANKRUPTCY: A statutory lien for rent is a vested property right which the Bankruptcy Law cannot take from its owner. *Ginsberg v. Lindel* (C.C.A.) 107 Fed. (2d) 721.

BILLS OF EXCEPTION: The fact that an attorney is in court at the time judgment is rendered does not change the rule that he has 20 days after service of written notice of entry of judgment within which to prepare a bill of exceptions. *Savage v. Superior Court,* 100 C.A.D. 223.

CONSTITUTIONAL LAW: A person affected by a judgment and who could have attacked the constitutionality of a statute on which the judgment is based is bound by the judgment although the statute is later declared unconstitutional in anoher action. *Chicot County Drainage Dist. v. Baxter State Bank,* U. S. Sup. 84 L. Ed. 277.

COPYRIGHTS: The right to make copies of a painting of a person who pays an artist for his portrait is in the individual and not in the painter. *Yardley v. Houghton Miflin Co.,* 108 Fed. (2d) 28.

CORPORATIONS: Directors are primarily and stockholders are secondarily liable for corporate assets distributed to stockholders while creditors remained unpaid and no statute of limitations applies. *Beatty v. Patterson etc. Bus Co.* (N. J. Ch.) 9 Atl. (2d) 686.

CORPORATIONS: Rules applicable to individual dealings between a director and stockholders do not apply to transactions resulting in benefits to directors as a result of a consolidation or merger of corporations. *Am. Trust Co. v. Calif. etc. Ins. Co.,* 99 C. D. 71.

CORPORATIONS: Rules relating to duties of director to stockholders fully discussed and conclusion reached that law has not been finally settled in California. *Am. Trust Co. v. Calif. etc. Ins. Co.,* 99 C. D. 71.

DEEDS: When land is conveyed upon condition to use it for a designated purpose with a reversionary right in the grantor, the reversionary right ceases after use for the purpose designated continues for a reasonable period of time. *Romero v. Dept. of Public Works,* 100 C. A. D. 119.

DEEDS OF TRUST: Sec. 580a, C. C. P., limiting deficiency judgment after sale under a deed of trust to difference between the debt and the appraised value of the property is constitutional as applied to existing deeds of trust. It does not violate the tender clause or the contract clause of the U. S. Constitution. *Kirkpatrick v. Stelling,* 100 C. A. D. 335.

DISMISSALS: Where there has been a partial trial and the issuance of a preliminary injunction on stipulation the case cannot be dismissed thereafter on the theory that it has not been brought to trial within five years. *City of L. A. v. Superior Court,* 99 C. D. 53.

DIVORCE: A Mexican divorce has no validity. The wife is not estopped by acceptance of payments for many years under a property settlement agreement from attacking it for fraud and duress. Strong dissent by McComb, J. *Est. of McNutt,* 100 C. A. D. 241.

ELECTIONS: A person who has removed from a precinct within forty days may nevertheless vote there at a general election. *McMillan v. Sieman,* 100 C. A. D. 377.

EVIDENCE: Circumstantial evidence sufficient to sustain a civil judgment need not exclude every other reasonable conclusion. *Katenkamp v. Union Realty Co.,* 100 C. A. D. 275.

EVIDENCE: To admit evidence that a written contract to convey real property was intended to cover property thereafter acquired by the vendor and not described would violate the parol evidence rule and the statute of frauds. *Palm Springs etc. Co. v. Palm Springs Land Co.*, 100 C. A. O. 382.

EXECUTORS: If a note secured by deed of trust is due the executor should allow a claim against the estate even though no sale proceedings under the deed of trust have been instituted and if he disallows the claim suit must be instituted within three months. *Bank of America v. Gillett*, 100 C. A. D. 183.

EXECUTORS: Probate court has jurisdiction in a decree of distribution to order the income from properties included in a compromise agreement to be distributed pursuant to the terms of the agreement. *Est. of Dobbins*, 100 C. A. D. 237.

EXECUTORS: Bequest to an employee "if he is still in my employ" can be sustained on theory that legatee's employment was only temporarily suspended if dismissal was obtained by fraud of residuary legatee. *Est. of Fletcher*, 100 C. A. D. 254.

EXECUTORS: Probate court has jurisdiction to try title to property as between the executor and the estate and the jurisdiction continues after the executor resigns and until the final account is settled. *Waterland v. Superior Court*, 99 C. D. 65.

FEDERAL COURTS: On certiorari to U. S. Supreme Court to review state court's decision unless there is an explicit statement that the state court reversed solely because of a violation of the federal constitution, the U. S. Supreme Court will not take over the case. *McGoldrick v. Gulf Oil Corp.*, U. S. Sup. 84, L. Ed. 337.

FOREIGN CORPORATIONS: Principle is reaffirmed that a foreign corporation which qualifies to do business in a state may be sued in the federal district court of the state in which it does business. *Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co.*, U. S. Sup. 84, L. Ed. 329.

FRAUD: Fraudulent representations made to a third person are actionable if there is reason to believe that the person injured would act upon them. *Am. Trust Co. v. Calif. etc. Ins. Co.*, 99 C. D. 71.

FRAUD: An *agreement* to defraud other persons is illegal and rules which apply to fraud between individuals are not applicable. *Am. Trust Co. v. Calif. etc. Ins. Co.*, 99 C. D. 71.

FRAUD: Actual suppression of facts is not mere nondisclosure but constitutes actual fraud. *Am. Trust Co. v. Calif. etc. Ins. Co.*, 99 C. D. 71.

HOSPITALS: A paying patient in a charitable non-profit hospital can recover for negligent treatment. Case fully investigates the subject and rejects statement of law in American Law Institute. *Silva v. Providence Hospital*, 99 C. D. 20.

INSURANCE: The insurance commissioner as the representative of policy holders in a corporation may attack the legality of an agreement consolidating two insurance companies where a fraudulent arrangement resulting in benefit to directors who were large stockholders existed. *Am. Trust Co. v. Calif. etc. Ins. Co.*, 99 C. D. 71.

LABOR: Los Angeles city picketing ordinance held invalid in so far as it limits right to picket to "bona fide employees" or prohibits the right to use banners. *People v. Garcia*, Cal. App. Dec., Supp. No. 110, p. 171.

NAVIGABLE WATERS: A littoral landowner may use reasonable means to protect his property from the sea but the construction of groins which result in the washing away of sand from the beaches of other landowners is an unreasonable means of protection and subjects the owner to liability for damages. *Katenkamp v. Union Realty Co.*, 100 C. A. D. 275.

TAXATION: The action to recover taxes illegally collected because of errors in fixing the tax levies is dismissed and the 1939 provisions repealing the grant of the right to sue to collect taxes illegally paid is held constitutional. *Southern Service Co. v. County of Los Angeles*, 99 C. D. 43.

USURY: Money definitely allocated to a borrower although not actually used by him is to be treated as the real principal of the loan. Money paid for the privilege of prepayment of a loan is not to be included in determining the legal amount of interest. *French v. Mortgage Guar. Co.*, 100 C. A. D. 113.

WITNESSES: Writings which can be used only to refresh the recollection of a witness cannot be required to be produced by a subpoena duces tecum. *C. S. Smith v. The Superior Court*, 100 C. A. D. 287.

LAW LIBRARY NEWS NOTES

By Thomas S. Dabagh, Librarian

INCOME. The income of the Law Library for the last fiscal year was derived as follows:

Filing Fees	98.4%
Membership Fees	1.6%

No money raised by taxation is expended by the Law Library, but the County is directed by law (Pol. C. 4198) to furnish quarters.

CATALOG DEPARTMENT. In the tenth month of its establishment, the Catalog Department of the Law Library can point to an impressive list of substantial accomplishments. Bibliographies of state and federal laws, reports, constitutional convention proceedings, attorney general reports and opinions, judicial council reports and bar association proceedings, have all been checked and the materials on the shelves suitably recorded. A list of American and English legal periodicals, a list of reports of the British Empire, and several special lists of text books have also been similarly checked and records made. Further, reference lists of the Library's holdings of Latin American materials have been made, and numerous want lists prepared. Work on card ordering for the bibliographic catalog has been started.

IMPORTANT NEW MATERIALS ACQUIRED

Lack of space compels us to omit references to periodical literature this month. Those interested are referred to the columns by William B. Stern in the *Daily Journal* and the *Los Angeles News* for November 17, December 5 and 27, and February 8.

BIOGRAPHY. Legal biography is well represented this time by new books on Justices of the United States Supreme Court. Marshall and Taney are the subjects of a book by Palmer; Mr. Justice Miller and the Supreme Court, 1862-1890, is the title of a book by Fairman; and the Life of Taft is presented by Pringle.

BUSINESS. Thayer's Cases and Materials in the Law Merchant is a modern book on sales, while the titles of Bloomfield's Chain Stores and Legislation, and Grether's Price Control Under Fair Trade Legislation, indicate suitably the subjects they cover.

CONSTITUTIONAL LAW. The Constitution of the United States is once more a popular subject for legal writers. Jerome's Problem of the Constitution and Smith's Studies on the Adequacy of the Constitution discuss various fundamental matters of policy, while Hackett's Constitutional History of the United States, 1776-1826, gives us a review of the formative period and early functioning of our fundamental law.

Patterson's Free Speech and Free Press is also properly mentioned here, as a history of one of the most important features of our governmental system. Patterson is Chairman of the A. B. A. Committee on Cooperation between the Bar, Press and Radio.

COURTS. The new Federal Rules are now annotated by a regular service published by Callaghan.

Leek's California Judicial Township Maps show the boundaries of the townships in California's counties.

CRIMINAL LAW. Hill's Criminal Law of California supplies a needed explanatory text on an important section of our local law, while Orfield's Criminal Appeals in America is a study of the methods employed throughout the United States in regard to the appeal of criminal cases, with reference also to English methods.

ESSAYS. Frankfurter's Law and Politics, and Rodell's Woe Unto You, Lawyers, are challenging the attention of members of the bar, while Burdick's Bench and Bar of Other Lands, and Stephenson's Law in the Light of History (Book I, Western Europe in the Middle Ages), furnish reading of a less controversial but perhaps more informative nature.

INTERNATIONAL LAW. Ziegler's International Law of John Marshall looks to the past for enlightenment; Drelles and Armstrong's Can America Stay Neutral, discusses a problem of vital importance for the immediate future.

LANDLORD AND TENANT. A new book on the law of this subject, by Bennett, discusses leases, covenants, liabilities, etc., and contains some useful forms.

MARTIAL LAW. Rankin's When Civil Law Fails discusses the legal basis of martial law, and its use in labor and other disputes.

MEDICAL JURISPRUDENCE. The Medicolegal Phases of Occupational Diseases, by Sappington, is a comprehensive review of the subject, with tables of useful information.

PERSONAL INJURIES; TORTS. Hall's Last Clear Chance is of particular interest because of the importance of its subject, and the fact that it is a local publication.

The Relation of Trauma to New Growths, by Behan, deals with the medicolegal aspects of the development of cancer, tumors, etc., from injuries.

William's Liability for Animals, an English book, is of interest to the American lawyer for the historical background it supplies.

PROPERTY LAW. The new Thompson on Real Property, in 10 volumes, will deal not only with estates, titles and liens generally, but will also have

a special part on oil and gas grants, leases, and options. Three volumes are already available.

Clark's Law of Surveying and Boundaries includes material on riparian rights as well as on other boundary matters.

Real Property and Abstracting, By Gore, furnishes a general review of real property law.

ROMAN LAW. Buckland's Manual of Roman Private Law, second edition, is another volume recently published in this field, and is indicative of a new interest in the subject.

TAXATION. The Prentice-Hall Federal Tax Course provides a brief guide to the solution of tax problems in all types of federal taxes, while Steinmann's Income Tax Procedure is an outline of the organization of the Bureau of Internal Revenue, and of practice before it in the usual income tax case.

WILLS. Bright's to Will or Not to Will is largely a collection of extracts from more or less humorous or otherwise interesting wills, intended to amuse the reader.

THE FABLE OF THE LOGICAL CANDIDATES

By Richard C. Heaton, of the Los Angeles Bar

ONCE UPON A TIME there were two Logical Candidates to fill a vacancy on the Bench. One of these candidates was a Sound Lawyer. He had been a Good Student at law school and had Kept Up throughout the years of his Practice. His Experience at the Bar had been Extensive and Varied. He was a Wise and Sympathetic Counselor and Knew How to Try a Lawsuit. His analysis of Legal Problems was accurate and his judgment was mature. He was Honest and Fearless; when his mind was Made Up he did as he Thought Best, even though it was sometimes necessary to Step on Toes. The Law was his Chief Interest in life and he had worked so hard at it that, while his knowledge was Profound, he had not had time to Make Contacts or to Cultivate People. In fact, except for his numerous Satisfied Clients, almost no one Outside the Profession would ever have Heard of Him had it not been for his Activities in the Bar Association.

The other Logical Candidate was a Charming Lawyer. He had spent a Great Deal of his time at law school in Extra-curricular Activities, including Campus Politics, and had learned just enough law to Get a Degree and Squeak By the Bar Examination. After he was Admitted he turned his attention to Building Up a Practice. He Joined Everything, he Dabbled in Politics, he made it a point to Remember Names, and of course he Never Forgot a Face. Pretty soon, naturally, he Knew Everyone. He was Fully Aware of the power of the press and Missed No Opportunity to hob-nob with the Newspaper Boys. Sometimes he would even Appear in Court to have his Picture Taken, although he was usually too busy Building Up his Practice to pay any attention to the practice itself. This Didn't Matter to him, however, for he had begun to Make Money and could easily afford to Hire Someone to do the Work. He was so successful in Getting Publicity that it wasn't long before he was known to One and All as a Famous Lawyer. Somehow, though, he had Never Had Time to devote to legal studies. His Judgment remained purely that of the Reasonable Man, untainted by any special knowledge relating to the Administration of Justice. In fact, as he sometimes Laughingly Confessed, he Didn't Know the First Thing About Law.

But did the Sound Lawyer soon begin addressing the Charming Lawyer as "Judge"? You're Darned Right he did.

MORAL: ***Ignorantia legis neminem excusat.***

APPEALS ON QUESTIONS OF FACT

By Joseph I. King, of the Los Angeles Bar

EVERY lawyer concerned with the administration of justice will read with interest the article by Judge Frank G. Tyrrell entitled, "Extending the Grounds of Appeal."[1] Not every lawyer will find himself in entire agreement with Judge Tyrrell's conclusions. The learned judge was apparently thinking of but one or two of the several types of appeal on questions of fact.

The first type of such appeal is the one in which the appellant "takes a long chance" either because he does not want to pay the judgment, or, since these things work both ways, because he still has hopes of obtaining a payment in exchange for a dismissal. Few, if any, lawyers will say that appeals of this type should be countenanced.

The second type is the one in which the appellant feels he has a good case at law on the issues actually litigated in the trial court, but is denied his right of appeal by a finding on an issue which was not actually litigated. For example, suppose a complaint for services rendered on an express oral contract, and a common count for the reasonable value of the services; an answer denying the contract, setting up the statute of frauds, and alleging the tender and acceptance of a relatively small sum in full payment; a trial in which the real grounds of contest were the existence of the contract and the applicability of the statute of frauds; incidental testimony of the plaintiff that he did not accept the small sum in full payment; incidental (*not* primary) testimony of the defendant that the small sum was tendered in full payment; and findings for the defendant on all the issues. The case may have been actually decided on the trial judge's beliefs as to the applicability of the statute of frauds, which may have been entirely erroneous, yet the finding that the plaintiff accepted a small sum in full payment, supported as it is by the testimony of the defendant, effectively blocks any appeal.

The third type is the one in which the appellant has a good case, and loses through some slip of his attorney or some clever trick of the adversary's attorney, and fails, for one reason or another, to get the trial judge to grant a motion for a new trial. The question here is whether the judge's exercise of his discretion in ruling on the motion for new trial should be reviewable on appeal.

The fourth type is the one in which the appellant has a good case, and loses because of bias and prejudice on the part of the jury and/or the judge. In most cases of this type, the appellate court stretches the rules by finding that the verdict or decision is not supported by any competent evidence. The best example which comes to mind offhand is the case of *Callahan v. Hahnemann Hospital*,[2] where the verdict was obviously wrong, and yet actually had some support in the evidence.

One of the great difficulties with justice in our large cities is its unevenness. There are "plaintiff" judges and "defendant" judges, "plaintiff" juries and "defendant" juries. The inevitable result is a good deal of futile litigation, cases commenced or defended in the sole hope that some unforeseen quirk in the mind of a judge, some unexpected development at the trial, will produce an unmerited reward in the form of a successful outcome. The unpredictability of the outcome of any litigation is proverbial.

It is interesting to note one of the branches of the law of England which so far has had little or no effect on American jurisprudence. Under the Judicature

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[1] Los Angeles Bar Association Bar Bulletin August, 1939, Vol. 14, p. 330.
[2] 1 Cal. (2d) 447.

Act of 1873,[3] Sec. 48, every motion for a new trial of any cause or matter on which a verdict had been found by a jury, or by a judge without a jury, and every motion in arrest of judgment, or to enter judgment *non obstante veredicto,* or to enter a verdict for plaintiff or defendant, or to enter a nonsuit, or to reduce damages, had to be heard before a Divisional Court.[4] A divisional court is a court constituted by two or three, and no more, of the Judges of the High Court.[5] As a matter of custom, the Lord Chief Justice of England (who is and always has been a trial judge) usually sits, together with one other judge. The direct result is that the Lord Chief Justice, with one or two of his associates, is empowered to exercise effective supervision over the justice being administered by his court.

Some similar system might work wonders in improving the quality of justice administered by the Los Angeles Superior Court. Suppose the Presiding Judge, instead of being primarily a chief administrative officer, were the judicial leader of the court. Suppose that he was authorized, upon a proper request from counsel, to direct that a motion for new trial be argued before a court composed of himself, the judge who tried the case, and, if he so desires, one other judge, the motion for new trial to be presented on the pleadings, together with the other papers in the file and either a bill of exceptions or the reporter's transcript of the testimony. It may be assumed that under such circumstances the trial judge would have full opportunity to advise his leader of his own reactions to certain testimony, and of his real reasons for deciding as he did. It may also be assumed that the decision of the divisional court would in most

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[3]36 & 37 Vict. c. 66.

[4]It was later found more convenient to have all motions for new trial presented directly to the Court of Appeal. See 53 & 54 Vict. c. 44, secs. 1, 4; 15 & 16 Geo. 5, c. 49, sec. 30(1).

One of the available grounds of motion is that the verdict or decision is against the weight of the evidence, and a new trial has been granted on that ground alone. The methods of trial in England, particularly the practice of the trial judge in making full notes of the testimony and his comments thereon, are the English answer to Judge Tyrrell's objections. Of course, he and the present writer are dealing with trials and appeals in California.

[5]36 & 37 Vict. c. 66, sec. 40. The present number is two, with certain exceptions. 15 & 16 Geo. 5, c. 49, sec. 63.

cases be unanimous. The great advantage would be that one or two judges could be made responsible, to a certain extent, for the justice being dealt out by the entire court, and that we lawyers would be better able to predict the outcome of litigation and to arrive at a settlement based on such prediction, instead of gambling on drawing a "favorable" judge in the Calendar Department lottery. Another advantage, not inconsiderable, would be the right to a review without the expense attendant upon printing transcripts and briefs on appeal.

Such a change would place no added burden on the appellate courts, for there would be no expansion of the present grounds of appeal. Initially, it might well place an added burden on the judges of the Los Angeles Superior Court, for all lawyers have a natural urge to try out new machinery to see how it works. The long run result should be a reduction of litigation, with a consequent lessening of the burden on the judges. Whether that lessening would amount to approximately 6% (the time of one judge out of thirty-six) is questionable, but, if it does result in much better justice, the salary of an additional judge is not a very high price to pay therefor.

Reference is made to the Superior Court alone. Appeals from Municipal Court judgments are based upon an inexpensive record; and the Appellate Department of the Superior Court is sufficiently like a divisional court of the type outlined to insure the exercise of a fairly effective control over the Municipal Court, provided the former court desired to do so and were authorized to set aside verdicts and decisions of the latter court which are against the weight of the evidence. A slow start is better than one which is too ambitious, and experiments with Superior Court procedure will excite wider interest and comment.

To sum up. The justice meted out in our trial courts is faulty in that it is uneven. It would be better if it were administered under the supervision of one judge. That judge should have authority sufficient to exercise an adequate control over the rulings on motions for a new trial.

BAR AND COMMUNITY CHEST

SEVEN Los Angeles attorneys have accepted membership on the newly-enlarged volunteer Community Chest budget committee that will study the 88 Chest agencies, their needs, services and finances, as a basis for 1940 allocation of Chest funds. J. C. Macfarland, the Bar Association senior vice-president, also has given considerable time to this work in the past. Members of the committees which have enlisted the volunteer work of more than 100 business and professional men include Gardner Bullis, who is also president of the Council of Social Agencies, which is a department of the Community Welfare Federation operating both the Chest and the Council; Eli Bush, F. D. R. Moote, Isaac Pacht, George W. Prince, Jr., James D. Randles, the Hon. Benjamin Scheinman, Judge of the Superior Court.

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SHOULD ADJUDICATION OF INCOMPETENCY OR INSANITY TERMINATE A MARRIAGE?

By Gilbert F. Nelson, of the Beverly Hills Bar Association

PERHAPS it is within the experience of every practicing attorney to know of at least one case where a husband or wife having taken the marriage vow, for better or for worse, is carrying on nobly under conditions which constitute a living death.

An actual instance known to the writer might serve to illustrate similar situations. An attractive young woman of 25 married a very capable and intelligent young man of 27. During the first two years of married life this couple had a child. When the child was about a year old the young father suffered a stroke. A blood clot settled on a portion of the brain causing irreparable damage to the brain tissue before the clot was absorbed. When the young father was able to be on his feet again it was found that he wept constantly and was too mentally incompetent to care for himself. For the sake of the child and the health of the mother he was placed in an institution where he is now and will perhaps remain indefinitely. It is almost a certainty that he will never regain either his mental or physical health even in part. However, he is a young man and may continue in his present state for many years.

The young mother is now 30. The care of her infant child and of herself should be enough but in addition she pays a monthly charge for the maintenance of her husband. Needless to say her small estate is being rapidly exhausted. All of her friends are married couples. It is obvious that she is not eligible for the company of a single man and is only acceptable socially through pity.

Being a woman of sterling qualities this young mother would take no steps to free herself from her burden even if any course was open to her and in the law as it is there is none open. The broad rule is laid down that a spouse who is insane can not be guilty of conduct that will constitute a cause for divorce in favor of the other, for the reason that he or she is incapable of intentionally doing or committing any act that will constitute a ground for divorce. Divorce, however, is not the approach for such a situation as this. Certainly not divorce in the customary manner. A single method occurred to the writer and is set forth as follows:

A relative, friend or anyone having knowledge of the facts could file a petition alleging upon information or belief the incompetency or insanity of any married person. Within a reasonable time after filing such petition it could be referred to a court investigator qualified to examine and report upon the facts and if found a proper case the petition could be reported to the court for further proceedings. The court could then order the necessary medical examination and after hearing thereon enter an interlocutory decree terminating the marriage which would become final after one year unless good cause was shown prior to that time why a final decree should not be entered.

Perhaps to prevent this method being used by artful persons, full powers of inquiry should be given to the court and its investigators. In the opinion of the writer, however, this proceeding could be carried on without embarrassment to an honest husband or wife of an incompetent. If the marriage was terminated by this proceeding, a return to normal living would at least be open to the spouse of the incompetent if he or she wished to take advantage of it. In society as it exists today the present situation is both archaic and intolerable.

Los Angeles Bar Association

MARCH MEETING

Thursday, March 28, 1940, 6:30 P.M.

UNIVERSITY CLUB
614 South Hope Street

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The Association is indeed proud to announce that a distinguished and celebrated man of letters has kindly consented to return as our guest speaker . . .

Rupert Hughes

will address the assembled members of the association on

"The Evolution of The Lawyers' Practice"

Mr. Hughes comes to us again upon the insistent demand of many of our members who recall his masterly address at the annual meeting during the year 1935. Of the countless splendid programs presented by the Association on previous occasions, no speaker has captured the interest and acclaim of our members with more facility than Mr. Hughes.

Mr. Hughes has devoted a wealth of time to the subject of "The Evolution of the Lawyers' Practice," and is thoroughly qualified to speak authoritatively on the subject.

Program Committee
LOS ANGELES BAR ASSOCIATION

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(CALIFORNIA)

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